IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 238 OF 1995

Rajendra Ramchandra Kshirsagar,
Aged about 26 years,
resident of Sadar Bazar,
90, Sainik Nagar,
Taluka and District Satara ...Appellant.

Versus

The State of Maharashtra ...Respondent

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Shri. B.K. Raje, Advocate for the appellant.

Shri. A.S. Shitole, A.P.P. for Respondent.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 4TH NOVEMBER, 2004

ORAL JUDGMENT:-

1. The appellant who is the original accused, has been convicted under Section 307 of I.P.C. by the learned Additional Sessions Judge, Satara in Sessions case No. 57/92. The appellant has been sentenced to R.I. for five years and to pay fine of Rs.2000/- i/d S.I. for six months.

2. On the last occasion i.e. on 25.10.2004 when this matter came up for hearing, injured witness in this case i.e. P.W.7 Jitendra Govind Gajvani was personally present before this Court. So also the

appellant was present before this Court and they both showed their desire to settle the matter amicably. It was stated on behalf of the injured witness i.e. P.W.7 Jintendra Gajvani that now despite the conviction, the relations between the appellant and him are amicable and both of them are residing amicably and peacefully at Satara and the complainant Jitendra Gajvani does not desire that the appellant should go to jail. I ascertained that the complainant i.e. P.W.7 Jitendra Gajvani voluntarily decided to settle the matter and I granted time to complainant i.e. P.W.7 Jintendra Gajvani to file his affidavit. Accordingly, necessary affidavit has been filed by the complainant i.e. injured witness P.W.7 Jitendra Gajvani. The said affidavit is taken on record and marked as "X" for identification.

3. However, it is seen that the appellant has been convicted under Section 307 of I.P.C. which is a non compoundable offence, hence, I cannot acquit the appellant-original accused on the basis of the said compromise. However, useful reference may be made to the decision reported in **1995 Supp (4) SCC page 631 Salim and others Vs. State of M.P.** wherein similar facts arose. In the said case, the appellants were convicted under section 307 read with 34 of I.P.C. The Apex Court had observed

thus:-

> **"We cannot acquit the accused persons on the basis of the compromise. However, as held by this Court in Ram Pujan and others V/s. State of U.P. the fact that they have compromised the matter and have patched up their differences and the fact that since then they have been living together happily, has relevance so far as the question of sentence is concerned."**

The Hon'ble Apex Court after having been satisfied of genuineness of the compromise allowed the appeal and directed that the sentence should be altered to that already undergone.

4. In the present case also the appellant has been convicted under Section 307 of I.P.C. The facts in the present case and those in the case of Salim (supra) are similar, hence, I am also inclined to pass a similar order with a view that henceforth, no untoward incident takes place between the parties and that the appellant and complainant i.e. injured witness P.W.7 Jitendra Gajvani will live in peace and harmony. The appellant who is personally present before the Court has stated that he wishes to compensate the injured witness for the expenses incurred by him for his medical treatment which amount is Rs.90,000/-. In this view of the matter, though the sentence of imprisonment will be reduced

to the period undergone, the fine amount is increased by Rs.90,000/- (Rupees Ninety thousand only). The additional amount of Rs.90,000/- (Rupees Ninety thousand only) to be deposited by the appellant before the Trial Court by 22.12.2004. Out of the total fine amount of Rs.92,000/- i.e. Rs.2,000/- as imposed by the learned Sessions Judge and Rs.90,000/- increased fine, Rs.90,000/- be paid by way of compensation to Shri. Jitendra Gajvani. The fine amount of Rs.2000/- as imposed by the learned Sessions Judge has already been deposited by the appellant.

5. It is further stated by the appellant that if amount is not deposited within stipulated time, this order shall stand vacated and the appeal would stand revived. This statement made by the appellant is accepted. On the said amount of Rs.90,000/- being deposited in the trial Court, the complainant-injured witness P.W.7 Shri. Jitendra Govind Gajvani would be entitled to withdraw the same.

6. In this view of the matter, this appeal is partly allowed. The conviction of the appellant under Section 307 of I.P.C. is confirmed. However, the sentence is reduced to the period already undergone by the appellant. The fine

amount of Rs.2000/- as imposed by the learned Sessions Judge is increased to Rs.92,000/-. The fine amount to be deposited before the trial Court by 22.12.2004. The appellant is on bail, his bail bond shall stand cancelled after the amount of Rs.90,000/- is deposited in the trial Court. The amount of Rs.90,000/- be paid to Shri. Jitendra Govind Gajvani by way of compensation. On the amount of Rs.90,000/- being deposited P.W.7 Shri. Jitendra Govind Gajvani would be entitled to withdraw the same.

7. Criminal appeal is partly allowed.

8. An authenticated copy of this judgment be supplied to the parties.

9. Certified copy is expedited.

(SMT. V.K. TAHILRAMANI, J.)